

PRESIDENT. If the argument for the bank is good, every Peer ought to vest his estate in bank-stock. His person is safe by law; his stock is secure from arrestment by the charter and from adjudication by the argument for the bank.

PITFOUR. I do not doubt of the power of the king to grant the charter. The clause subsists as long as a man is in life, and can transfer; but, if a man can no longer transfer, there must be another remedy. Adjudication is all that we have for a herry water-net; many subjects, not strictly heritable, may be carried by adjudication; such as the *jus mariti*, &c. There are declaratory adjudications known in law; because, where there is a right, there must be the means of explicating that right.

On the 13th February 1770, "The Lords found the bank-stock adjudgeable."  
*Act. R. M'Queen. Alt. A. Lockhart.*  
*Reporter, Pitfour.*

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1770. February 4. JANET THOMSON *against* HUGH M'KAILL.

*PACTUM ILLICITUM.*

A marriage-brokage obligation *contra bonos mores*, and not actionable.

[*Fac. Coll. V. 50 ; Dictionary, 9519.*]

PRESIDENT. The first question is, Whether is this obligation actionable? *Second*, Whether Janet Thomson has performed? As to the first, the stipulation is *contra bonos mores*: In giving any one assistance towards matrimony, there must be no lucrative stipulation. It is *turpe* to bargain money. The consequences must be fatal to society. It is a shameful trade, no matter whether concerning a match with one woman or with any woman: In both cases the match-maker is *maquignon de chair humaine*. I will say nothing of the decree of the House of Peers, in *Lady Mary Herbert's* case. That house may decide upon large principles of equity; but I think the Chancellor's judgment was right. This negotiation was carried on without the approbation of some of the parents. The young woman's father knew nothing of it. Dallas urged on the poor weak lad. He, in effect, says,—“Marry the woman against her father's will, or without his knowledge:” that is, “Be as unhappy as you please, provided I get my nine guineas.” Plain that M'Kaill knew nothing of the marriage till after it was consummated. The young woman also was deceived by false representations of the state and fortune of the young man. I also doubt as to the condition of the contract being fulfilled. By the condition, a marriage-contract was required, and this implied the consent of parents.

COALSTON. No argument has been pleaded, here, in support of the obliga-

tion, which might not have been equally pleaded had the bargain been made to get a footman married to the lady of the highest rank in the kingdom.

KAIMES. M'Kaill ratified the marriage. This might have been sufficient, had the question been solely with respect to implementing the condition; but the obligation itself is *contra bonos mores*; for the implementing could not be without dissimulation and guile. Janet Thompson could not say to the young woman, "I am to have nine guineas if I can conclude a match between you and Walter M'Kaill." She was therefore bribed to act falsely, and falsely she acted.

On the 13th February 1770, "The Lords found that the office undertaken by the pursuer, in terms of the missive, was *contra bonos mores*; refused action, and found expenses due."

*Act.* R. Sinclair. *Alt.* G. Ferguson.  
*Reporter,* Kaimes.

1770. February 14. ALEXANDER MUIR *against* JAMES WALLACE.

WRIT—LOCUS PŒNITENTIÆ.

A Writing, neither in terms of the Act 1681, c. 5, nor holograph, insufficient to constitute a bargain as to heritage, though the subscription was acknowledged.

[*Faculty Collection*, V. p. 60; *Dictionary*, 8457.]

COALSTON. I doubt how far the acknowledgment of the subscription is not sufficient to remove the objection of a statutory nullity. Solemnities were required for preventing forgery, and, when the subscription is acknowledged, that reason of the statute ceases.

PRESIDENT. The contrary was found in the case of *M'Kenzie* and *Park*, very deliberately determined. When land is to be conveyed, it is expedient to adhere to our feudal rules.

HAILES. I have good reason to remember the case of *M'Kenzie* against *Park*. I was lawyer in it on the losing side. I observe some commendations bestowed on a paper signed by me in that cause. I do not deserve it; for the paper was not composed by me, but by a person whom I am not at liberty to name, (Lord Kaimes). At the time, I own I did not digest the decision; but it has been uniformly followed, and I consider it as a safe rule.

MONBODDO. If it is once admitted that an heritable subject may be conveyed by the form of missives, I cannot distinguish between a missive holograph and one where subscription is acknowledged. This was a solemn transaction, and it is no modest or ingenuous plea which the defender urges. As to this point, there are decisions, old and new, which run contrary. I therefore find myself at liberty to determine according to principles.